

Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

conclusive. *Dyer Bros. v. Central Iron Works* (1920) 182 Calif. 588, 189 Pac. 444. If the amount is fixed with the intent of preventing a breach, it is construed to be a penalty. *Dubinsky v. Wells Bros.* (1914) 218 Mass. 232, 105 N. E. 1004; *Seeman v. Bieman* (1900) 108 Wis. 365, 84 N. W. 490. Where the object is to estimate the probable damage, it is generally held to be liquidated damages. *Florence Wagon Works v. Salmon* (1910) 8 Ga. App. 197, 68 S. E. 866; *Davidow v. Wadsworth Mfg. Co.* (1920) 211 Mich. 90, 178 N. W. 776; (1910) 20 YALE LAW JOURNAL, 153. If the sum agreed upon is not unreasonable, payment will be enforced irrespective of whether it is called a "penalty" or "liquidated damages." *In re Liberty Doll Co.* (1917, S. D. N. Y.) 242 Fed. 695; *Wise v. United States* (1919) 249 U. S. 361, 39 Sup. Ct. 303. In view of the almost universal practice of refusing to accept the terms selected by the parties as conclusive when injustice will ensue, the result reached by the instant case seems remarkable.

EVIDENCE—HEARSAY—RES GESTAE—SPONTANEOUS UTTERANCES.—The deceased was shot by an unknown person and was rendered speechless. Thirty minutes later, upon regaining his power of speech, he stated that a stranger had shot him. In the trial of the defendant for murder, this utterance was admitted. *Held,* that the evidence was properly admitted, since the deceased had had no opportunity to deliberate. *Commonwealth v. Puntario* (1922, Pa.) 115 Atl. 831.

The defendant was indicted for murder. The trial court excluded a self-serving statement made by him to a sheriff who arrived a few minutes after the shooting. *Held,* that a sufficient time had elapsed after the main event to render the statement inadmissible as part of the *res gestae. Sherman v. State* (1921, Okla.) 202 Pac. 521.

In several jurisdictions the utterance and the event must be absolutely contemporaneous to make the statement admissible. *Eastman v. Boston & Me. Ry.* (1896) 165 Mass. 342, 43 N. E. 115; *McCarrick v. Kealy* (1898) 70 Conn. 642, 40 Atl. 603. The instant cases apply the theory, advocated by Dean Wigmore and adopted by most states, that the utterance need not be contemporaneous to constitute a part of the same event, but must be made under the stress of some startling occurrence, and within a period of time so closely connected with it, that the mind of the declarant is still under the control of the excitement and incapable of fabrication. *Eby v. Travelers' Insurance Co.* (1917) 258 Pa. 525, 102 Atl. 209; 3 Wigmore, *Evidence* (1904) sec. 1747; (1919) 29 YALE LAW JOURNAL, 814. The admissibility of such evidence is within the reasonable discretion of the court. *Roach v. Great Northern Ry.* (1916) 133 Minn. 257, 158 N. W. 232. The mental condition of the declarant should properly be the controlling factor in such determination, since it is a better guaranty of trustworthiness than mere lapse of time. See Morgan, *A Suggested Classification of Utterances Admissible as Res Gestae* (1922) 31 YALE LAW JOURNAL, 229; see also (1914) 23 *ibid.* 282.

LANDLORD AND TENANT—COVENANT BY LESSEE TO PAY TAXES—TAXES PAYABLE AFTER EXPIRATION OF TERM.—The lessee covenanted to pay all taxes assessed, levied, or imposed upon the premises during the term. The lessor sued to recover for taxes which were assessed during the last year of the term, but not payable until after it had expired. *Held,* (three judges *dissenting*) that the plaintiff could recover. *Wall v. Hess* (1922) 232 N. Y. 472, 134 N. E. 536.

It is generally held that the lessee by assuming to pay taxes assessed "during the term" is under a duty to pay them, even though by law they are not due until after the expiration of the lease. *Baker v. Horan* (1917) 227 Mass. 415, 116 N. E. 808; *Ogden v. Getty* (1905) 100 App. Div. 430, 91 N. Y. Supp. 664; *Elliot v. Gantt* (1895) 64 Mo. App. 248; see Tiffany, *Landlord and Tenant* (1912) sec. 143.

The minority view in the instant case was that the parties intended that the lessee should be liable only for taxes which became a lien on the land before the lessee gave up the premises.

TORTS—NEGLIGENCE IN PERFORMANCE OF CONTRACT—INJURY TO THIRD PARTY.—The defendants had been engaged by a vendor to weigh a quantity of beans which they knew the plaintiff had bought and had contracted to pay for according to the defendants' certificate of weight. The defendants negligently certified the weight to be more than it actually was, and the plaintiff, in consequence, overpaid the vendor. The plaintiff then brought an action of tort for negligence. *Held,* (one judge *dissenting*) that the plaintiff could recover. *Glanzer v. Shepard* (1922, N. Y. Ct. of App.) 67 N. Y. L. JOUR. 23 (April 27, 1922).

The court frankly disregarded the obstacle of contractual privity and imposed a duty of care on the defendants merely because they knew that a third party would rely on their act. Liability for injury to a third party caused by the negligent performance of a contract duty has been extended by means of numerous and increasing exceptions until the old rule denying such liability has been practically obliterated. See *Collette v. Page* (1921, R. I.) 114 Atl. 136; (1921) 31 YALE LAW JOURNAL, 109; (1922) 20 MICH. L. REV. 561. Those engaged in supplying information are traditionally immune from liability to those not in privity of contract. *Jaillet v. Cashman* (1921, Sup. Ct.) 115 Misc. 383, 189 N. Y. Supp. 743; (1921) 31 YALE LAW JOURNAL, 218. The decision of the Appellate Division in the instant case was approved, and the subject generally discussed in COMMENTS (1921) 30 YALE LAW JOURNAL, 607.

WORKMEN'S COMPENSATION—INJURY CAUSED BY ATTACK OF EPILEPSY NOT ARISING "OUT OF EMPLOYMENT."—The plaintiff, while operating an elevator in the defendant's building, was attacked by a fit of epilepsy producing unconsciousness. He was later found in an injured condition at the bottom of the elevator shaft. On inspection the elevator equipment was found to be in perfect working order. *Held,* (two judges *dissenting*) that the plaintiff's injuries did not arise out of the employment. *Kelly v. Nichols* (1921) 199 App. Div. 870, 191 N. Y. Supp. 445.

Although the courts have always attempted to interpret workmen's compensation acts liberally in favor of the employee, they have almost uniformly refused to construe an injury caused solely by disease as arising "out of the employment." *Joseph v. United Kimona Co.* (1921) 194 App. Div. 568, 185 N. Y. Supp. 700; *Cox v. Kansas City Refining Co.* (1921) 108 Kan. 320, 195 Pac. 863; *Brooker v. Industrial Acc. Com.* (1921, Calif.) 200 Pac. 17; *contra, Vulcan Detinning Co. v. Industrial Com.* (1920) 295 Ill. 141, 128 N. E. 917. This view is clearly correct. Otherwise any injury arising in the course of employment would be compensative and the requirement that it also arise "out of" the employment would be rendered nugatory. See *Scholtzhauer v. C. & L. Lunch Co.* (1922) 233 N. Y. 12, 134 N. E. 701; COMMENTS (1922) 31 YALE LAW JOURNAL, 768.